

February 25, 2004

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to implement pesticide-related obligations of the United States under the international conventions or protocols known as the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the “PIC and POPs Conventions and the LRTAP POPs Protocol Implementation Act”.

SEC. 2. DEFINITIONS.

Section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) is amended by adding at the end the following:

“(pp) CONFERENCE.—The term ‘Conference’ means the Conference of the Parties established by paragraph 1 of Article 19 of the POPs Convention.

“(qq) CONFERENCE LISTING DECISION.—The term ‘Conference Listing Decision’ means a decision by the Conference to approve an amendment to list a pesticide in Annex A or Annex B to the POPs Convention.

“(rr) DESIGNATED NATIONAL AUTHORITY.—The term ‘designated national authority’ means the authority or authorities that a government has designated in a notification to the PIC Convention Secretariat in accordance with Article 4 of the PIC Convention.

“(ss) EXECUTIVE BODY.—The term ‘Executive Body’ means the Executive Body established by Article 10 of the 1979 Convention on Long-Range Transboundary Air Pollution.

“(tt) EXECUTIVE BODY DECISION 1998/2.—The term ‘Executive Body Decision 1998/2’ means the decision of the Executive Body titled ‘Executive Body Decision 1998/2 on Information to Be Submitted and the Procedure for Adding Substances to Annexes I, II, or III to the Protocol on Persistent Organic Pollutants’ and any other Executive Body decision done pursuant to Article 14 of the LRTAP POPs Protocol.

“(uu) HCH.— The term ‘HCH’ means hexachlorocyclohexane.

“(vv) LRTAP POPs PESTICIDE.—The term ‘LRTAP POPs pesticide’ means—

- “(1) aldrin;
- “(2) chlordane;
- “(3) chlordecone;
- “(4) dichlorodiphenyltrichloroethane (DDT);
- “(5) dieldrin;
- “(6) endrin;
- “(7) HCH;
- “(8) heptachlor;
- “(9) hexachlorobenzene;
- “(10) hexabromobiphenyl;
- “(11) mirex;
- “(12) PCBs;
- “(13) toxaphene; and
- “(14) any other pesticide—

“(A) that is listed on Annex I or Annex II of the LRTAP POPs Protocol;

“(B) that has no existing United States registrations that would prevent the United States from complying with its obligations under the LRTAP POPs Protocol if the United States were to become a party to the LRTAP POPs Protocol for that pesticide;

“(C) if not registered in the United States, for which the Administrator, pursuant to section 17(e)(8)(B), has either—

“(i) made a no-export determination as defined in subsection (xx)(2); or

“(ii) prohibited through rulemaking all production for export of the unregistered pesticide that would prevent the United States from complying with its obligations under the LRTAP POPs Protocol if the United States were to become a party to the Protocol for that pesticide; and

“(D) for which an amendment listing it on Annex I or Annex II of the LRTAP POPs Protocol has entered into force for the United States.

“(ww) LRTAP POPs PROTOCOL.—The term ‘LRTAP POPs Protocol’ means the Protocol on Persistent Organic Pollutants to the 1979 Convention on Long-Range Transboundary Air Pollution done at Aarhus on June 24, 1998, if the United States is a party.

“(xx) NO-EXPORT DETERMINATION.—The term ‘no-export determination’ means—

“(1) a determination by the Administrator, with the concurrence of the United States Trade Representative (after a determination by the Secretary of State that the POPs Convention would prohibit export (except export for the purpose of environmentally sound disposal) of an unregistered pesticide listed on Annex A or B of the POPs Convention if the United States were to become a party to the POPs Convention for that pesticide) that the unregistered pesticide is not produced for export or exported (except export for the purpose of environmentally sound disposal) from the United States; or

“(2) a determination by the Administrator that an unregistered pesticide, which is listed on Annex I or II of the LRTAP POPs Protocol, is not produced for export in the United States.

“(yy) PCB.—The term ‘PCB’ means a polychlorinated biphenyl.

“(zz) PIC CONVENTION.—The term ‘PIC Convention’ means the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade done at Rotterdam on September 10, 1998, if the United States is a party.

“(aaa) POPs CONVENTION.—The term ‘POPs Convention’ means the Stockholm Convention on Persistent Organic Pollutants done at Stockholm on May 22, 2001, if the United States is a party.

“(bbb) POPs PESTICIDE.—The term ‘POPs Pesticide’ means—

- “(1) aldrin;
- “(2) chlordane;
- “(3) dichlorodiphenyltrichloroethane (DDT);
- “(4) dieldrin;
- “(5) endrin;
- “(6) heptachlor;
- “(7) hexachlorobenzene;
- “(8) mirex;
- “(9) PCBs;
- “(10) toxaphene; and
- “(11) any other pesticide—

“(A) that is listed on Annex A or Annex B of the POPs Convention;

“(B) that has no existing United States registrations that would prevent the United States from complying with its obligations under the POPs Convention if the United States were to become a party to the POPs Convention for that pesticide;

“(C) if not registered in the United States, for which the Administrator, pursuant to section 17(e)(8)(A), has either—

“(i) made a no-export determination as defined in subsection (xx)(1) of this section; or

“(ii) prohibited through rulemaking all export of the unregistered pesticide that would prevent the United

States from complying with its obligations under the POPs Convention if the United States were to become a party to the Convention for that pesticide; and

“(D) for which an amendment listing it on Annex A or Annex B of the POPs Convention has entered into force for the United States.

“(ccc) POPs REVIEW COMMITTEE.—The term ‘POPs Review Committee’ means the Persistent Organic Pollutants Review Committee established under paragraph 6 of Article 19 of the POPs Convention.”.

SEC. 3. POPS CONVENTION, LRTAP POPS PROTOCOL, AND PIC CONVENTION.

Section 17 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136o) is amended—

(1) in the heading for the section, by striking “IMPORTS AND EXPORTS.” and inserting “IMPORTS, EXPORTS, AND INTERNATIONAL CONVENTIONS.”;

(2) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “this Act—” and inserting “this Act, if—”;

(B) in paragraph (1)—

(i) by striking “when” and inserting “the pesticide or device or active ingredient used in producing a pesticide is”;

(ii) by striking “and” after the semicolon; and

(C) by striking paragraph (2) and all that follows and inserting the following:

“(2) in the case of any pesticide other than a pesticide registered under section 3 or sold under section 6(a)(1), the foreign purchaser has, prior to export, signed a statement acknowledging that

the purchaser understands that the pesticide is not registered for use in the United States and cannot be sold in the United States under this Act; and

“(3) such export is in compliance with all of the applicable provisions of this section.

A copy of the statement under paragraph (2) shall be transmitted to an appropriate official of the government of the importing country.”;

(3) in subsection (c), by adding at the end the following: “Nothing in this subsection shall permit the import of any POPs pesticide or LRTAP POPs pesticide that otherwise is prohibited under subsection (e) of this section.”; and

(4) by striking subsections (d) and (e) and inserting the following:

“(d) COOPERATION IN INTERNATIONAL EFFORTS GENERALLY.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

“(e) POPS CONVENTION, LRTAP POPS PROTOCOL, AND PIC CONVENTION.—

“(1) IN GENERAL.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate in technical cooperation and capacity building activities designed to support implementation of the POPs Convention, the LRTAP POPs Protocol, and the PIC Convention.

“(2) PROHIBITIONS.—No person may sell, distribute, use, produce, or dispose of a POPs pesticide or LRTAP POPs pesticide in a manner inconsistent with obligations of the United States under the POPs Convention or LRTAP POPs Protocol.

“(3) NOTICE AND REPORT AFTER DECISION THAT SCREENING CRITERIA ARE MET UNDER THE POPS CONVENTION OR AFTER RISK PROFILE SUBMITTED UNDER THE LRTAP POPS PROTOCOL.—

“(A) APPLICABILITY.—This paragraph applies if—

“(i) the POPs Review Committee or Conference decides—

“(I) under paragraph 4(a) of Article 8 of the POPs Convention, that a proposal for listing a pesticide in Annex A, B, or C to the POPs Convention fulfills the screening criteria specified in Annex D to the POPs Convention; or

“(II) under paragraph 5 of Article 8 of the POPs Convention, that such a proposal shall proceed; or

“(ii) a party to the LRTAP POPs Protocol submits to the Executive Body a risk profile in support of a proposal to list a pesticide in Annex I, II, or III to the LRTAP POPs Protocol.

“(B) NOTICE.—After the date of the POPs Review Committee or Conference decision on a proposal or the submission of a risk profile in support of a proposal under the LRTAP POPs Protocol described in clauses (i) or (ii) of subparagraph (A), respectively, the Administrator may—

“(i) publish in the Federal Register a notice of the proposal; and

“(ii) provide opportunity for comment on the proposal.

“(C) REQUIRED ELEMENTS OF NOTICE.— A notice under subparagraph (B) shall—

“(i) identify the pesticide that is the subject of the proposal;

“(ii) include a summary of the process under the POPs Convention or the LRTAP POPs Protocol for the submission of a proposal and listing of a pesticide that is the subject of a proposal (including criteria applied in that process);

“(iii) include a summary of the POPs Review Committee or Conference decision and the basis for the decision or a summary of the risk profile that a party to the LRTAP POPs Protocol submitted to the Executive Body;

“(iv) request information relevant to and comment on—

“(I) in the case of a pesticide proposed for listing in an Annex to the POPs Convention, the information requirements and screening criteria elements covered under Annex D to the POPs Convention; or

“(II) in the case of a pesticide proposed for listing in an Annex to the LRTAP POPs Protocol, the information referenced in paragraph 6(a) of Article 14 of the LRTAP POPs Protocol;

“(v) request information set forth in subparagraph (D);

“(vi) include any other information that the Administrator considers to be relevant to the proposal;

“(vii) request information and comment on information relevant to the risk profile of the POPs Review Committee covered under Annex E to the POPs Convention and on information relevant to any technical review conducted under paragraph 2 of Executive Body Decision 1998/2; and

“(viii) include a statement that any information submitted may be part of the record of any cancellation proceeding related to the pesticide that the Administrator may undertake under section 6 (or a rulemaking under paragraph (8) of this subsection).

“(D) PROVISION OF INFORMATION.—

“(i) PROVISION OF INFORMATION UNDER POPS CONVENTION.—Within 60 days after the date of publication of the notice under subparagraph (B) regarding a proposal to list a pesticide on an Annex to the POPs Convention, or within a later date as determined by the Administrator, any interested person may provide to the Administrator information or comment on—

“(I) the annual quantity of the pesticide manufactured and the locations of the manufacture;

“(II) the uses of the pesticide;

“(III) the approximate annual quantity of the pesticide that is released into the environment; and

“(IV) other information or monitoring data relating to the pesticide that is consistent with the information specified in paragraph 1 of Annex D, and subsections (b) through (e) of Annex E, to the POPs Convention.

“(ii) PROVISION OF INFORMATION UNDER LRTAP POPS PROTOCOL.—Within 60 days after the date of publication of the notice under subparagraph (B) regarding a proposal to list a pesticide on an Annex of the LRTAP POPs Protocol, or within a later date as determined by the Administrator, any interested person may provide to the Administrator information on—

“(I) the potential for long-range transboundary atmospheric transport of the pesticide;

“(II) the toxicity of the pesticide;

“(III) the persistence of the pesticide, including biotic degradation process and rates of degradation products;

“(IV) the bioaccumulation of the pesticide, including bioavailability;

“(V) the annual quantity of the pesticide manufactured and the locations of the manufacture;

“(VI) the uses of the pesticide;

“(VII) the approximate annual quantity of the pesticide released into the environment;

“(VIII) environmental monitoring data relating to the pesticide (in areas distant from sources);

“(IX) information on—

“(aa) alternatives to the uses of the pesticide and the efficacy of each alternative; and

“(bb) known adverse environmental or human health effects associated with each alternative;

“(X) information on—

“(aa) process changes, control technologies, operating practices, and other

pollution prevention techniques that can be used to reduce the emissions of the pesticide; and

“(bb) the applicability and effectiveness of each technique describe in item (aa); and

“(XI) information on nonmonetary costs and benefits and the quantifiable costs and benefits associated with the use of each alternative described in subclause (IX) or technique described in subclause (X)(aa).

“(E) REPORT BY THE ADMINISTRATOR.—Based upon information received under this paragraph and any other relevant information available to the Administrator, the Administrator, not later than 240 days after the date of publication of a notice under subparagraph B, after consulting with the Secretary of Agriculture or, for public health pesticides, with the Secretary of Health and Human Services, shall issue for public comment and peer review a report that contains, at a minimum—

“(i) information on the production and uses in the United States of the pesticide; and

“(ii) a review of the benefits and risks in the United States and internationally associated with the production and uses in the United States and internationally of the pesticide.

“(4) NOTICE AND REPORT AFTER DECISION THAT GLOBAL ACTION IS WARRANTED UNDER THE POPS CONVENTION OR THAT FURTHER CONSIDERATION OF THE PESTICIDE IS WARRANTED UNDER THE LRTAP POPS PROTOCOL.—

“(A) APPLICABILITY.—This paragraph applies if—

“(i) the POPs Review Committee decides, under paragraph 7(a) of Article 8 of the POPs Convention, that global action is warranted with respect to the pesticide that is the subject of the proposal, or the Conference decides under paragraph 8 of that Article that the proposal shall proceed; or

“(ii) the Executive Body determines pursuant to paragraph 2 of Executive Body Decision 1998/2 that further consideration of the pesticide is warranted and therefore requires 1 or more technical reviews of the proposal.

“(B) NOTICE.—After the date of the decision or determination under subparagraph (A), the Administrator may—

“(i) publish in the Federal Register a notice of the decision or determination; and

“(ii) provide an opportunity for comment on the decision or determination.

“(C) REQUIRED ELEMENTS OF NOTICE.— A notice under subparagraph (B) shall—

“(i) identify the pesticide that is the subject of the proposal;

“(ii) include a summary of the POPs Review Committee or Conference decision and the basis for the decision or the Executive Body determination and the basis for the determination;

“(iii) for a pesticide proposed for addition to an Annex of the POPs Convention, request information and comment on socioeconomic considerations covered under Annex F of the POPs Convention, including on the technical feasibility and costs and benefits of the range of possible prohibitions outlined pursuant to clause (vii);

“(iv) for a pesticide proposed for listing on an Annex to the LRTAP POPs Protocol, request information and comment on—

“(I) any additional measures not outlined in the notice published pursuant to clause (vii) that may exist to reduce the risks of adverse health effects on human health or the environment that result from its long-range transboundary atmospheric transport;

“(II) whether any of the additional measures or the measures outlined in the notice published pursuant to subparagraph (vii) are technically feasible; and

“(III) the associated costs and benefits of the additional measures and the measures outlined in the notice published pursuant to subparagraph (vii);

“(v) request information on any current or anticipated production or use of the pesticide that is the subject of the proposal for which the United States may wish to seek an exemption or acceptable purpose under the POPs Convention or allowed restricted use or condition under the LRTAP POPs Protocol;

“(vi) request information set forth under subparagraph (D);

“(vii) outline a broad range of possible actions that the United States might take to address any risks that the pesticide may pose;

“(viii) specify whether there have been any changes to registrations of or tolerances for the pesticide since the date of publication of the notice under paragraph (3); and

“(ix) include a statement that any information submitted may be part of the record of any cancellation proceeding related to the pesticide that the Administrator may undertake under section 6 (or a rulemaking under paragraph (8) of this subsection).

“(D) PROVISION OF INFORMATION.—Within 60 days after the date of publication of the notice under subparagraph (B), or within a later date as determined by the Administrator, any interested person may provide to the Administrator—

“(i) consistent with the information needs described in Annex F to the POPs Convention, any information relevant to—

“(I) a risk management evaluation carried out under paragraph 7 of Article 8 of the POPs Convention; or

“(II) a decision by the Conference under paragraph 9 of Article 8 of the POPs Convention;

“(ii) consistent with the information needs for the technical review described in paragraph 2 of Executive Body Decision 1998/2, any information relevant to such technical review or to an Executive Body decision made under paragraph 3 of Article 14 of the LRTAP POPs Protocol;

“(iii) any information relevant to an action under this subsection; and

“(iv) information on any article in use that consists of, contains, or is contaminated with the pesticide.

“(E) REPORT BY ADMINISTRATOR.—Based upon information received under this paragraph and any other information available to the Administrator, the Administrator, not later than 240 days after the date of publication of the notice

under this subparagraph (B), after consulting with the Secretary of Agriculture or, for public health pesticides, with the Secretary of Health and Human Services, shall issue a report for public comment and peer review that contains, at a minimum, information relating to the costs and benefits of the prohibitions or restrictions outlined in response to paragraph 4(C)(vii) that could be placed on the sale, distribution, production, use, or disposal of the pesticide (including the possible consequences of using alternative products or processes).

“(5) NOTICE AFTER RECOMMENDATION THAT CONFERENCE CONSIDER LISTING OR AFTER COMPLETION OF A TECHNICAL REVIEW.—

“(A) IN GENERAL.—If the POPs Review Committee recommends, under paragraph 9 of Article 8 of the POPs Convention, that the Conference consider making a Conference listing decision with respect to the pesticide in accordance with the proposal, or after completion of a technical review of a proposal to list a pesticide on an Annex to the LRTAP POPs Protocol, the Administrator may—

“(i) publish in the Federal Register a notice of the recommendation or completion of the technical review; and

“(ii) provide opportunity for comment on the recommendation or the technical review.

“(B) REQUIRED ELEMENTS.—A notice under subparagraph (A) shall—

“(i) include a summary of the POPs Review Committee recommendation and the basis for the recommendation or a summary of the technical review;

“(ii) summarize any control measures for the pesticide that are identified by the POPs Review Committee or in the technical review; and

“(iii) include a statement that any information submitted may be part of the record of any cancellation proceeding related to the pesticide that the Administrator may undertake under section 6 (or paragraph (8) of this subsection).

“(6) PROVISION OF INFORMATION TO THE PUBLIC.—Not later than March 1st of each calendar year (and September 1st of each calendar year unless nothing has changed from the March 1st notice or the Administrator has notified the public in other Federal Register notices of the changes), the Administrator shall publish a notice in the Federal Register that—

“(A) identifies any pesticide that is the subject of a listing proposal under Article 8 of the POPs Convention or Article 14 of the LRTAP POPs Protocol and describes, as of December 31st of the previous calendar year (or June 31st of the current calendar year for notices published on September 1st), the exact status of the proposal in the relevant listing process, including—

“(i) whether the POPs Review Committee or Conference has decided that, under Article 8, paragraphs 4 or 5 of the POPs Convention, the proposal to list the pesticide shall proceed to preparation of a risk profile of the pesticide;

“(ii) whether the POPs Review Committee has completed a risk profile;

“(iii) whether the POPs Review Committee or Conference has decided that, under Article 8, paragraph 7(a) or paragraph 8 of the POPs Convention, the proposal to list the pesticide shall proceed to preparation of a risk management evaluation of the pesticide that includes analyses of possible control measures for the pesticide;

“(iv) whether the POPs Review Committee has completed the risk management evaluation;

“(v) whether the POPs Review Committee has made a listing recommendation to the Conference regarding the pesticide and a general description of the recommendation;

“(vi) whether the Executive Body has determined that a technical review of the proposal to list a pesticide on Annex I or II of the LRTAP POPs Protocol is warranted;

“(vii) whether a technical review of a proposal to list a pesticide on Annex I or II of the LRTAP POPs Protocol has been completed; and

“(viii) whether any task force, working group, or other body that is subsidiary to the Executive Body has made a recommendation regarding the listing of the pesticide on Annex I or II of the LRTAP POPs Protocol and a description of the recommendation;

“(B) identifies any pesticide that the Conference or Executive Body has added to Annex A or B of the POPs Convention or Annex I or II of the LRTAP POPs Protocol since the last notice the Administrator published under this paragraph and provides a general description of the control measures related to the pesticide; and

“(C) describes generally any regulatory action that the Administrator has taken, is taking, or has listed as under development or review in the Unified Regulatory Agenda (as required by section 602 of title 5, United States Code) related to any pesticide that the Conference or Executive Body added to Annex A or B of the POPs Convention or Annex I or II of the LRTAP POPs Protocol since the last notice the Administrator published under this paragraph.

The Administrator shall consider any comments that the Administrator receives on the notices that the Administrator publishes under this paragraph.

“(7) CONSIDERATION OF INFORMATION IN CANCELLATION OF REGISTRATION OR PROHIBITION OF PRODUCTION FOR EXPORT OR EXPORT OF PESTICIDES.—In a cancellation proceeding under section 6, or a rulemaking under paragraph (8) of this subsection, for a pesticide listed on Annex A or Annex B of the POPs Convention or Annex I or Annex II of the LRTAP POPs Protocol, the Administrator may consider—

“(A) the record compiled under paragraphs (3), (4), and (5) of this subsection;

“(B) domestic sale, distribution, production, export, and use of the pesticide;

“(C) national and international consequences that are likely to arise as a result of domestic regulatory actions (including the possible consequences of using alternative products or processes);

“(D) for pesticides listed on Annex A or Annex B of the POPs Convention—

“(i) the POPs Review Committee recommendation under paragraph 9 of Article 8 of the POPs Convention;

“(ii) the Conference listing decision;

“(iii) information that the United States submits to the POPs Review Committee or to the Conference pursuant to Article 8 of the POPs Convention; and

“(iv) the reports, including any versions of the reports revised to reflect information received through public comment and peer review, that the Administrator is required to issue for public comment and peer review pursuant to paragraphs (3)(E) and (4)(E) of this subsection;

“(E) for pesticides listed on Annex I or Annex II of the LRTAP POPs Protocol—

“(i) any technical review conducted pursuant to paragraph 2 of Executive Body Decision 1998/2;

“(ii) the LRTAP POPs Protocol listing decision;

“(iii) the reports, including any version of the reports revised to reflect information received through public comment or peer review, that the Administrator is required to issue for public comment and peer review pursuant to paragraphs (3)(E) and (4)(E) of this subsection; and

“(iv) information that the United States submitted to the Executive Body, or a subsidiary of the Executive Body, in relation to a technical review or listing decision; and

“(F) scientific information included in or used to develop or support the items listed in subparagraphs (A), (B), (C), (D), and (E). In determining the weight to give such scientific information, the Administrator shall consider the extent to which it is consistent with generally accepted scientific principles, including, when available, peer reviewed science and supporting studies.

“(8) EXPORT OF UNREGISTERED PESTICIDES LISTED ON ANNEX A OR ANNEX B OF THE POPs CONVENTION AND PRODUCTION FOR EXPORT OF UNREGISTERED PESTICIDES LISTED ON ANNEX I OR ANNEX II OF THE LRTAP POPs PROTOCOL.—

“(A) POPs CONVENTION.—

“(i) NO-EXPORT DETERMINATION.—If an unregistered pesticide (other than those listed in paragraphs (1) through (10) of subsection (bbb) of section 2) is listed on Annex A or Annex B of the POPs Convention, the Administrator may make a no-export determination as defined in section 2(xx)(1).

“(ii) RULEMAKING.—

(I) IN GENERAL.—If the Administrator determines, with the concurrence of the Secretary of State and the United States Trade Representative, that there is export of an unregistered pesticide that would prevent the United States from complying with its obligations under the POPs Convention if the United States were to become a party to that Convention for that pesticide, the Administrator may prohibit by rule such export.

“(II) CRITERIA FOR RULEMAKING.—In conducting such a rulemaking, the Administrator shall prohibit export of an unregistered pesticide that generally causes unreasonable adverse effects on the environment, taking into account the information listed in paragraph (7).

“(III) SCOPE OF RULEMAKING.— In the rulemaking, the Administrator shall not prohibit export of an unregistered pesticide if the export would be consistent with an available specific exemption for production and use listed in Annex A or Annex B of the POPs Convention if the United States were to become a party to the POPs Convention for that pesticide.

“(IV) EFFECTIVE DATE.—Such a rule shall become effective on the date that an obligation under the POPs Convention related to the pesticide enters into force for the United States. At least 30 days prior to the rule becoming effective, the Administrator shall publish in the Federal Register a notice announcing the effective date of the rule.

“(B) LRTAP POPS PROTOCOL.—

“(i) NO-EXPORT DETERMINATION.—If an unregistered pesticide (other than those listed in paragraphs (1) through (13) of subsection (vv) of section 2) is listed on Annex I or Annex II of the LRTAP POPs Protocol, the Administrator may make a no-export determination as defined in section 2(xx)(2) ;

“(ii) RULEMAKING.—

(I) IN GENERAL—If the Administrator determines, with the concurrence of the Secretary of State and the United States Trade Representative, that there is production for export of an unregistered pesticide that would prevent the United States from complying with its obligations under the LRTAP POPs Protocol if the United States were to become a party to that Protocol for that pesticide, the Administrator may prohibit by rule such production for export.

“(II) CRITERIA FOR RULEMAKING.—In conducting such a rulemaking, the Administrator shall prohibit production for export of an unregistered pesticide that generally causes unreasonable adverse effects on the environment, taking into account the information listed in paragraph (7).

“(III) SCOPE OF RULEMAKING.—In the rulemaking, the Administrator shall not prohibit production for export of an unregistered pesticide if the production for export would be consistent with an available ‘Condition’ listed in Annex I of the LRTAP POPs Protocol or a ‘Restricted Use’ or ‘Condition’ listed in Annex II of the LRTAP POPs Protocol if the United States were to become a party to the Protocol for that pesticide.

“(IV) EFFECTIVE DATE.—Such a rule shall become effective on the date that an obligation

under the LRTAP POPs Protocol related to the pesticide enters into force for the United States. At least 30 days prior to the rule becoming effective, the Administrator shall publish in the Federal Register a notice announcing the effective date of the rule.

“(C) JUDICIAL REVIEW.—

“(i) IN GENERAL.—Not later than 60 days after the date of a no-export determination or the promulgation of a regulation under this paragraph, any person may file a petition for judicial review of the no-export determination or regulation with—

“(I) the United States Court of Appeals for the District of Columbia; or

“(II) the United States court of appeals for the circuit in which the person resides or maintains a principal place of business.

“(ii) NO JUDICIAL REVIEW.—A determination by the Secretary of State that the POPs Convention would prohibit export of an unregistered pesticide listed on Annex A or B of the POPs Convention if the United States were to become a party to the POPs Convention for that pesticide shall not be subject to judicial review.

“(iii) JURISDICTION.—The United States courts of appeal shall have exclusive jurisdiction over any action to obtain judicial review (other than in an enforcement proceeding) of a no-export determination made or a regulation promulgated under this paragraph if any United States district court would have had jurisdiction over the action but for this clause.

“(iv) COPIES.—The clerk of court with which such petition is filed under this paragraph shall submit to the

Administrator and Attorney General copies of the petition.

“(v) PROCEEDINGS.—With respect to an action to obtain judicial review under this paragraph, section 2112 of title 28, United States Code, shall apply to—

“(I) filing of the record of proceedings on which the Administrator based the no-export determination or regulation; and

“(II) any transfer proceedings between United States courts of appeal.

“(vi) STANDARD OF REVIEW.—Section 706 of title 5, United States Code, shall establish the scope of review of a no-export determination or regulation under this paragraph.

“(vii) FEES AND COSTS.—The decision of the court in an action commenced under clause (i) of this subparagraph, or of the Supreme Court of the United States on review of such a decision, may include an award of costs (including reasonable fees for attorneys) relating to the action if the court determines that such an award is appropriate.

“(viii) RECORD.—In this paragraph, the term ‘record’ means—

“(I)(aa) a no-export determination reviewed under this paragraph; or

“(bb) a regulation reviewed under this paragraph;

“(II) the information listed in paragraph (7) relevant to the pesticide that is the subject of the no-export determination or regulation;

“(III) any comments on the proposed regulation; and

“(IV) any other information that the Administrator determines to be relevant to the no-export determination or regulation.

“(9) NO EFFECT ON OTHER PROVISIONS.—Nothing in this subsection authorizes any sale, distribution, use, production, or disposal of any POPs pesticide or LRTAP POPs pesticide that is prohibited under any other provision of law. Nothing in this subsection should be interpreted as interfering with or being a prerequisite to the Administrator taking any action authorized by section 6.

“(10) REQUIREMENTS FOR EXPORTS.—In the case of a pesticide or active ingredient used in producing a pesticide identified by the Administrator as listed on Annex III of the PIC Convention in a notice issued under paragraph (13)(C), any person that distributes in commerce the pesticide or active ingredient used in producing a pesticide for export shall comply with any export conditions or restrictions identified by the Administrator in the notice.

“(11) PRE-EXPORT NOTICES.—

“(A) IN GENERAL.—

“(i) REQUIREMENT.—In the case of—

“(I) a pesticide or active ingredient used in producing a pesticide that the Administrator determines to be banned or severely restricted under paragraph (13)(A);

“(II) a pesticide or active ingredient used in producing a pesticide identified by the Administrator in a notice issued under paragraph (13)(C); or

“(III) a POPs pesticide the export of which is not prohibited under paragraph (2);

the exporter of the pesticide or active ingredient used in producing a pesticide shall provide to the Administrator notice of the intent of the exporter to export the pesticide.

“(ii) TIMING OF NOTICE FOR BANNED OR SEVERELY RESTRICTED PESTICIDE OR ACTIVE INGREDIENT USED IN PRODUCING A PESTICIDE.—

“(I) FIRST EXPORT.—In the case of a first export that an exporter makes from the territory of the United States to each importing foreign state after the Administrator issues a notice under paragraph (13)(A), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

“(II) SUBSEQUENT EXPORTS.— In the case of subsequent exports to the importing foreign state in calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first export in each calendar year.

“(iii) TIMING OF PRE-EXPORT NOTICE FOR PESTICIDES LISTED ON ANNEX III OF THE PIC CONVENTION.—

“(I) FIRST EXPORT.—In the case of a first export that an exporter makes from the territory of the United States to each importing foreign state after the Administrator notifies the public under paragraph (13)(C), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

“(II) SUBSEQUENT EXPORTS.— In the case of subsequent exports by the exporter to the importing foreign state in calendar years subsequent to the notification provided under subclause (I), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first such subsequent export in each calendar year.

“(III) CHANGED CIRCUMSTANCES MERITING NEW NOTICE.—If conditions or restrictions imposed by the importing foreign state change and the Administrator notifies the public of the change under paragraph (13)(C), or if an earlier pre-export notice no longer applies, the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

“(iv) TIMING OF PRE-EXPORT NOTICE FOR PESTICIDE THE EXPORT OF WHICH IS NOT PROHIBITED UNDER PARAGRAPH (2).—

“(I) FIRST EXPORT OF THE CALENDAR YEAR.— In the case of the first export that an exporter makes from the territory of the United States to each importing foreign state of a pesticide not prohibited from being exported under paragraph (2), the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first export.

“(II) SUBSEQUENT EXPORTS.— In the case of subsequent exports by the exporter to the importing foreign state in calendar years subsequent to the notification provided under subclause (I) to the importing foreign state, the

exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of the first such subsequent export in each calendar year.

“(III) CHANGED CIRCUMSTANCES MERITING NEW NOTICE.—If the information provided in an earlier pre-export notice is no longer accurate, the exporter shall provide the notice so that the Administrator receives the notice not earlier than 45 nor later than 15 calendar days before the date of export.

“(B) ALTERNATE TIME FRAME FOR NOTICES.—

“(i) DISCRETIONARY ALTERNATE TIME FRAMES.—Notwithstanding clauses (ii), (iii), and (iv) of subparagraph (A), the Administrator may set an alternate time frame if the Administrator determines that such alternate time frame is appropriate and is able, within such alternate time frame, to administer notice activities in accordance with the PIC Convention and comply with the POPs Convention.

“(ii) MANDATORY REVIEW OF STATUTORY TIME FRAMES AND PROCESSES.—Within 18 months of entry into force for the United States of the PIC Convention and within 18 months of entry into force for the United States of the POPs Convention, the Administrator shall review the statutory time frames for receipt of pre-export notices and the Administrator’s processing of such notices. In review of such time frames and processes, the Administrator, with the concurrence of the Secretary of State, shall consider whether amendments to the time frames and modifications to the processes would be appropriate to administer notice activities in accordance with the PIC Convention and to comply with the POPs Convention.

“(C) CONTENT OF PRE-EXPORT NOTICES.—

“(i) NOTICES FOR BANNED OR SEVERELY RESTRICTED PESTICIDE OR ACTIVE INGREDIENT USED IN PRODUCING A PESTICIDE.—A notice under subparagraph (A)(ii) shall include—

“(I) the name and address of the exporter;

“(II) the name and address of the appropriate designated national authority of the United States;

“(III) the name and address of the appropriate designated national authority of the importing foreign state, if available;

“(IV) the name and address of the importer;

“(V) the name of the pesticide or active ingredient used in producing a pesticide for which the notice is required;

“(VI) the expected date of export;

“(VII) information relating to the foreseen uses of the pesticide or active ingredient used in producing a pesticide, if known, in the importing foreign state;

“(VIII) information on precautionary measures to reduce exposure to, and emission of, the pesticide or active ingredient used in producing a pesticide;

“(IX) information relating to the concentration of the pesticide or active ingredient used in producing a pesticide; and

“(X) any other information specified in Annex V to the PIC Convention.

“(ii) NOTICES FOR PESTICIDES LISTED ON ANNEX III OF THE PIC CONVENTION—A notice under subparagraph (A)(iii) shall include—

“(I) all of the information required to be included under subparagraph (C)(i);

“(II) any information relating to export conditions or restrictions identified by the Administrator in the notice issued under paragraph (13)(C) with respect to the pesticide;

“(III) a general description of the manner in which the export complies with those conditions; and

“(IV) any other information that the Administrator determines by order published in the Federal Register to be necessary for effective enforcement of the export conditions or restrictions applicable to the pesticide.

“(iii) NOTICES FOR PESTICIDE THE EXPORT OF WHICH IS NOT PROHIBITED UNDER PARAGRAPH (2)—A notice submitted to the Administrator under subparagraph (A)(iv) shall include—

“(I) the name and address of the exporter;

“(II) the name and address of the importer;

“(III) a specification of the identity of the POPs pesticide;

“(IV) a general description of how the export is in accordance with the provisions related

to export in paragraph 2 of Article 3, or other applicable provision, of the POPs Convention; and

“(V) such other information as the Administrator determines by order published in the Federal Register to be necessary for enforcement of the export-related obligations of the POPs Convention applicable to the pesticide.

“(D) PRE-EXPORT NOTICES ACCOMPANYING EACH EXPORT.—An exporter shall ensure that a copy of the most recent applicable pre-export notice accompanies each shipment for export and is available for inspection upon export for—

“(i) any pesticide or active ingredient used in producing a pesticide that the Administrator has identified under paragraph (13)(C) as being listed on Annex III of the PIC Convention; or

(ii) any POPs pesticide that is exported.

“(E) RETENTION OF PRE-EXPORT NOTICES.—

“(i) IN GENERAL.—An exporter required to provide a notice under clauses (iii) and (iv) of subparagraph (A) shall comply with sections 8 and 9 and any regulations promulgated under those sections with regard to maintenance of the notice and other documents used to generate the notice and with regard to their availability for inspection and copying.

“(ii) TIME PERIOD FOR RETENTION.—Notwithstanding clause (i), such exporter shall maintain a copy of the notice and other documents used to generate the notice for a period of not less than 3 years beginning on the date on which the notice is provided.

“(12) LABELING REQUIREMENTS.—

“(A) IN GENERAL.—In the case of any pesticide or active ingredient used in producing a pesticide that is the subject of a notice issued under subparagraph (A) or (C) of paragraph (13) and that is sold, distributed, or produced, the pesticide or active ingredient used in producing a pesticide, shall, in accordance with the PIC Convention—

“(i) bear labeling information relating to risks or hazards to human health or the environment; and

“(ii) be accompanied by shipping documents that include any relevant safety data sheets on the pesticide.

“(B) CUSTOM CODES.—A pesticide or active ingredient used in producing a pesticide that is the subject of a notice issued under paragraph (13)(C) and that is distributed or sold for export shall be accompanied by shipping documents that bear, at a minimum, any appropriate harmonized system customs codes assigned by the World Customs Organization.

“(13) NOTICE REQUIREMENTS AND EXEMPTION.—

“(A) DETERMINATION WHETHER PESTICIDE IS BANNED OR SEVERELY RESTRICTED.—

“(i) IN GENERAL.—The Administrator, with the concurrence of the Secretary of State, shall determine whether a pesticide or active ingredient used in producing a pesticide is banned or severely restricted within the United States (as those terms are defined by the PIC Convention).

“(ii) NOTICE OF DETERMINATIONS.—Notwithstanding any other provision of law, the Administrator shall issue to the Secretariat of the PIC Convention and the public a notice of each determination under subparagraph (A) that includes—

“(I) in the case of a notice to the Secretariat of the PIC Convention, the information specified in Annex I to the PIC Convention; and

“(II) in the case of a notice to the public, at a minimum, a summary of that information.

“(B) NOTICE TO FOREIGN COUNTRIES.—

“(i) IN GENERAL.—Notwithstanding any other provision of law, on receipt of a notice of intent to export under paragraph (11)(A)(ii), the Administrator shall provide a copy of the notice to the designated national authority of the importing foreign state.

“(ii) NONIDENTIFIED DESIGNATED NATIONAL AUTHORITY.—In a case in which a designated national authority has not been identified, the Administrator shall provide the notice of intent to export to any other appropriate official of the importing foreign state, as identified by the Administrator.

“(C) NOTICE TO PUBLIC.—

“(i) IN GENERAL.—The Administrator, with the concurrence of the Secretary of State, shall issue a notice to inform the public of—

“(I) any pesticide that is listed on Annex III to the PIC Convention; and

“(II) any condition or restriction of an importing foreign state that is applicable to the import, in accordance with the PIC Convention, of the pesticide.

“(ii) TIMING.—A notice required under clause (i) shall be issued not later than 90 days after, and any conditions or restrictions described in clause (i)(II) shall take effect not later than 180 days after, the date of

receipt of a notice from the Secretariat of the PIC Convention who—

“(I) transmits import decisions of the parties to the PIC Convention; or

“(II) provides notice of the failure of the parties to provide import decisions.

“(iii) TREATMENT OF CONDITIONS AND RESTRICTIONS.—A condition or restriction identified by a notice required under clause (i) shall be considered to be an export condition or restriction for the purpose of paragraph (10).

“(D) NOTICE OF EXEMPTION.—The Administrator may issue a notice exempting any pesticide or active ingredient used in producing a pesticide from the requirements of paragraphs (10) through (12) if the Administrator determines, with the concurrence of the Secretary of State, that the exemption would be consistent with the PIC Convention or POPs Convention.

“(14) HARMONIZATION OF POPS CONVENTION AND LRTAP POPS PROTOCOL.—

“(A) IN GENERAL.—If a pesticide is both a POPs pesticide and a LRTAP POPs pesticide, in the case of a conflict between a provision of this subsection applicable to a POPs pesticide and a provision of this subsection applicable to a LRTAP POPs pesticide, the more stringent provision shall apply, as determined by the Administrator, with the concurrence of the Secretary of State.

“(B) APPLICATION.—In the case of a pesticide described in subparagraph (A), this paragraph shall be applied in such a manner as to ensure that the United States is in compliance with its obligations under the POPs Convention and the LRTAP POPs Protocol with respect to the pesticide.

“(15) HARMONIZATION OF POPS CONVENTION AND PIC CONVENTION.—

“(A) IN GENERAL.—If the export of a pesticide is addressed or restricted under paragraphs (2) through (8) and paragraphs (10) through (13), all of those paragraphs shall apply to the pesticide.

“(B) CONFLICT.—In the case of a conflict between paragraphs (2) through (8) and paragraphs (10) through (13) with respect to a pesticide, the more stringent provision shall govern.

“(C) APPLICATION.—With respect to a pesticide, paragraphs (2) through (13) shall be applied in manner as to ensure that the United States is in compliance with its obligations under both the POPs Convention and the PIC Convention with respect to the pesticide.

“(f) REGULATIONS.—

“(1) IN GENERAL.—The Administrator may promulgate such regulations as the Administrator determines, with the concurrence of the Secretary of State and notice to any other interested Federal Agency, to be necessary—

“(A) to facilitate implementation of this section;

“(B) to allow the pre-export notice requirement under this section and any pre-export notice requirement in other provisions or in any other Federal law to be satisfied by a single notice; and

“(C) to ensure compliance with the PIC Convention, the POPs Convention, and the LRTAP POPs Protocol.

“(2) IMPORTATION OF PESTICIDES AND DEVICES.—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of subsection (c) of this section.”.

SEC. 4. CONFORMING AMENDMENTS.

The Federal Insecticide, Fungicide, and Rodenticide Act is amended—

(1) in section 3(b) (7 U.S.C. 136a(b)), in the matter preceding paragraph (1), by striking “A pesticide” and inserting “Except as provided in section 17, a pesticide”; and

(2) in section 12(a)(2) (7 U.S.C. 136j(a)(2))—

(A) in subparagraph (R), by striking “or” after the semicolon;

(B) in subparagraph (S), by striking the period and inserting “; or”; and

(C) by adding at the end the following:

“(T) to violate any provision of section 17 or any regulation promulgated under that section.”.

SEC. 5. CONFORMING AMENDMENTS TO FIFRA TABLE OF CONTENTS.

The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended—

(1) in the items relating to section 2, by adding at the end the following:

[Insert new subsection captions added to sec. 2 of bill]; and

(2) in the items relating to section 17, by striking the items relating to sections (d) and (e) and insert the following:

[Insert new subsection (and paragraph headings) from new subsections of sec. 17 from sec. 3(3) of bill].